

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & JOHN

BANCO POPULAR DE PUERTO RICO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2005-157
	)	
NISKY PHARMACY, INC., ANGEL LUIS	)	
LEBRON a/k/a A. LUIS LEBRON, and	)	
BARBARA W. LEBRON,	)	
	)	
Defendants.	)	
_____	)	

ATTORNEYS:

Justin K. Holcombe, Esq.  
St. Thomas, U.S.V.I.  
*For the plaintiff.*

Nisky Pharmacy, Inc.  
*Pro se defendant.*

Angel Luis LeBron a/k/a A. Luis LeBron  
*Pro se defendant.*

Barbara W. LeBron  
*Pro se defendant.*

JUDGMENT

GÓMEZ, C.J.

The plaintiff in this matter, Banco Popular de Puerto Rico ("Banco Popular"), commenced this debt and foreclosure action in October, 2005, against *pro se* defendants Nisky Pharmacy, Inc. ("Nisky") as well as Angel Luis LeBron a/k/a A. Luis LeBron, and

Barbara W. LeBron (together, the "LeBrons"). The record reflects proof of service of the summons and complaint on each of the defendants. None of the defendants filed an answer or otherwise made an appearance in this matter. In December, 2005, Banco Popular moved for entry of default against the defendants pursuant to Federal Rule of Civil Procedure 55(a). In January, 2006, the Clerk of Court entered defaults against each of the defendants. Banco Popular now moves for default judgment against the defendants pursuant to Federal Rule of Civil Procedure 55(b)(2). The Court has reviewed the motion and supporting materials, and finds:

1. The LeBrons own real property described as Parcel No. 46-5 Estate Lindberg Bay, No. 4A Southside Quarter, St. Thomas, U.S. Virgin Islands, as shown on P.W.D. Drawing No. B9-164-T67. Mr. LeBron owns real property, described as follows: Parcel No. 2A Estate Neltjeberg (Eastern Part), No. 6 Little Northside Quarter, St. Thomas, U.S. Virgin Islands, as shown on P.W.D. Drawing No. D9-4965-T90; Parcel No. 45A Estate Agnes Fancy, Queens Quarter, St. Thomas, U.S. Virgin Islands, as shown on P.W.D. Drawing No. G9-1443-T70; Parcel No. 46-8 Estate Lindberg Bay, No. 4A Southside Quarter, St. Thomas, U.S. Virgin Islands, as shown on P.W.D. Drawing No. B9-164-T67; Parcel No. 66 Estate Boetzberg (Tide Village),

East End Quarter, St. Croix, U.S. Virgin Islands, as shown on P.W.D. No. 1229-A (all properties in this paragraph are collectively referred to as the "Properties").

2. Banco Popular and Nisky are parties to a loan agreement dated July 19, 2004, pursuant to which Banco Popular lent Nisky the principal sum of \$445,000 (the "Loan").
3. The obligation of Nisky to repay the Loan is evidenced by an installment note executed by Nisky in favor of Banco Popular on July 19, 2004, in the amount of \$445,000 (the "Note").
4. On July 19, 2004, Mr. LeBron executed an unlimited continuing guaranty for the repayment of the Note (the "Guaranty").
5. As security for the repayment of the Note, the LeBrons executed and delivered to Banco Popular a first priority mortgage covering the Properties dated July 19, 2004 (the "Mortgage"). The Mortgage was recorded with the Recorder of Deeds for the District of St. Thomas and St. John (the "St. Thomas/St. John Recorder") on July 20, 2004 as Document No. 2004006515, and with the Recorder of Deeds for the District of St. Croix on July 22, 2004 as Document No. 2004004426 (the "St. Croix Recorder").
6. As further security for the repayment of the Note, Nisky and Banco Popular entered into a security agreement dated July

19, 2004 (the "Security Agreement"), pursuant to which Nisky provided Banco Popular with a security interest in all of its inventory, accounts, chattel paper, payment intangibles, and other personal property more particularly described in the Security Agreement (the "Collateral"). Banco Popular perfected its security interest in the Collateral by filing a UCC-1 Financing Statement in the Office of the Lt. Governor on May 10, 2004 in UCC File No. 759/2004. Such security interest has remained perfected by the timely filing of Continuation Statements.

7. As further security for the repayment of the Note, the LeBrons executed and delivered to Banco Popular an Assignment of Leases and Rents dated July 19, 2004 (the "Assignment"), pursuant to which the LeBrons assigned to Banco Popular all of their rights, title and interest in the leases, licenses, concessions contracts and other agreements concerning the use or occupancy of the Properties, including all rents, income, receipts, revenues, issues and profits from such agreements (the "Rents"). The Assignment was recorded with the St. Thomas/St. John Recorder on July 20, 2004 as Document No. 2004006518, and with the St. Croix Recorder on July 22, 2005 as Document No. 2004004427.

8. As further security for the repayment of the Note, Nisky executed and delivered to Banco Popular an Assignment of Lease and Assignment of Subleases and Rents dated July 19, 2004, pursuant to which Nisky assigned to Banco Popular all of its rights, titles and interests in the leases, licenses, concession contracts and all other agreements concerning the use or occupancy of the Lease, including the Rents.
9. Nisky and the LeBrons are in default under the terms and conditions of the Security Agreement and Mortgage for, among other things, failing to make timely payments as called for in the Note.
10. Demand was made pursuant to the terms of the Note, the Mortgage, and the Security Agreement for payment of overdue principal, interest, and late charges, and absent payment, for the entire outstanding amount of principal and interest owed.
11. Nisky and the LeBrons have failed to cure their default within the time provided and have not paid the outstanding principal, interest and late charges, as demanded. As a result, Banco Popular has accelerated the sums due under the Note and the Security Agreement.
12. As of March 11, 2008, Nisky and Mr. LeBron owe Banco Popular \$414,562.53 in principal, \$129,725.66 in accrued interest,

plus late charges in the amount of \$14,177.15, for a total indebtedness of \$558,465.34. In addition, interest continues to accrue at the rate of \$95 per diem until the date of this Judgment, and late charges continue to accrue at a rate of five percent of the amount of each monthly payment. After entry of Judgment, interest will continue to accrue at the statutory rate until the date on which the Judgment is satisfied in full.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Banco Popular's motion for default judgment against the defendants is **GRANTED**; it is further

**ORDERED** that Banco Popular is awarded judgment against the defendants jointly and severally, in the principal amount of \$414,562.53, plus accrued interest as of March 11, 2008 in the amount of \$129,725.66, plus late charges in the amount of \$14,177.15, for a total amount due of \$558,465.34. Interest continues to accrue at the daily rate of \$95, and late charges continue to accrue at the rate of five percent of the amount of each monthly payment until the date of this Judgment and thereafter at the statutory rate until satisfied, plus an award of attorneys' fees and costs to be determined upon appropriate application filed any time prior to entry of an order confirming the sale of the Properties; it is further

**ORDERED** that Banco Popular's mortgage lien and security interest covering the Properties is a first priority lien; it is further

**ORDERED** that the Mortgage is foreclosed; it is further

**ORDERED** that the aforesaid liens shall be foreclosed and the Properties shall be sold by the United States Marshal according to law and the proceeds of such sale shall be applied first to the expenses associated with any sale, including but not limited to the costs of publication and the commission assessed by the United States Marshal's Service pursuant to 28 U.S.C. § 1921, and then toward satisfaction of this judgment in favor of Banco Popular, including any attorneys' fees and costs that may be awarded upon application and any sums that may be paid by Banco Popular for insurance premiums, taxes and expenditures necessary to maintain the Properties pending sale with interest from the date of any such payment. The surplus, if any, remaining after application of the proceeds as provided above, shall be returned to the defendants; it is further

**ORDERED** that:

1. Pursuant to title 5, section 484 of the Virgin Islands Code, notice of the Marshal's sale shall be posted for four (4) weeks prior to the sale in a public place in or near the Office of the Clerk of the Court; and published once a week

for at least four consecutive weeks prior to the sale in a newspaper regularly issued and of general circulation in the U.S. Virgin Islands. The notice shall describe the Properties as set out above and shall contain the terms and conditions of sale as set out herein.

2. The terms and conditions of the sale shall be as follows:
  - a. The Properties shall be sold as a whole at a public sale at the Office of the U.S. Marshal, Federal Building, St. Thomas, U.S. Virgin Islands.
  - b. Banco Popular may bid a credit against its Judgment and interest thereon, plus any costs and expenses, without tender of cash.
  - c. The terms of sale as to all other persons or parties bidding shall be cash.
  - d. The successful bidder on the Properties shall be required to deposit with the United States Marshal cash equal to ten percent of his total bid at or before 5:00 p.m. on the date of the sale of the Properties; and the remaining ninety percent of said purchase prices to be paid on or before 5:00 p.m. within thirty days inclusive, of the date of sale of the Properties.



- e. The United States Marshal shall make his report of the sale of the Properties within ten days from the date of the sale.
3. Banco Popular shall have any and all writs necessary to execute the terms of this Judgment; it is further
4. The defendants shall be liable to Banco Popular for any deficiency remaining after the sale of the Properties; it is further

**ORDERED** that the Court will retain jurisdiction to enforce the terms of this Judgment; and it is further

**ORDERED** that the Clerk of Court shall **CLOSE** this case.

S\\_\_\_\_\_  
**CURTIS V. GÓMEZ**  
Chief Judge